



INDEPENDENT COMMISSION ON MULTILATERALISM

Justice, Human Rights, and the International Legal System

Executive Summary

The UN Charter features human rights as one of the organization's three pillars, and immediately after its founding in 1945, the UN began defining the fundamental rights and freedoms it aimed to promote and guarantee. In addition to the three normative instruments at the core of the "universal human rights system"—the Universal Declaration of Human Rights of 1948 and the International Covenants on Civil and Political Rights and on Social, Economic and Cultural Rights adopted in 1966—the UN established a variety of mechanisms to assist states with implementing their legal obligations, to monitor compliance, and to foster accountability for alleged violations. However, significant challenges in terms of implementation and compliance with the normative framework remain.

The past three decades have seen significant developments with respect to international criminal justice, including for serious and widespread violations of human rights. The Security Council has played a key role in these developments, including by establishing the ad hoc International Criminal Tribunals for the Former Yugoslavia and Rwanda and through the powers it was granted under the Rome Statute establishing the International Criminal Court (ICC). However, the Security Council has taken on this role reluctantly and on an ad hoc basis. This reluctance stems largely from the inherent tensions between justice and peace, as well as the council's broader divisions and the permanent members' use of their veto powers.

Due to the ongoing challenges confronting the Security Council, it is important to consider options for preventing impunity beyond international tribunals and ICC referrals. One option is to emphasize the principle of complementarity on which the ICC was based, whereby states have the primary responsibility to investigate and prosecute the most serious crimes under international law. When domestic criminal justice mechanisms are not available, functional, or compliant with international human rights standards, hybrid courts or tribunals that are partly national and partly international offer another option.

Apart from criminal justice mechanisms, it is also important to look into non-judicial mechanisms for ensuring human rights compliance and accountability. These include the Human Rights Council's Universal Periodic Review process, the Council's Special Procedures and fact-finding mechanisms and commissions of inquiry as well as the UN Treaty Bodies. Other

mechanisms to promote and enhance the compliance with human rights include the ongoing processes of mainstreaming human rights in the UN's work, such as through the Human Rights up Front initiative and integration of human rights into work on achieving lasting peace and sustainable development. In all of these mechanisms, civil society has, can and should continue to play a seminal role.

The paper submits a number of recommendations to strengthen the multilateral system's capacity to promote and ensure respect for human rights, as well as accountability and justice for violations thereof:

- 1. Invest in prevention and the positive power of human rights:** Serious and sustained investment in promoting respect for human rights will contribute to conflict prevention, lasting peace, and sustainable development and reduce the need for ex post facto justice and accountability processes.
- 2. Ensure access to adequate justice:** The UN, member states, and civil society should join efforts to make the principle of complementarity work by strengthening and increasing the use of domestic justice mechanisms and supporting international or hybrid mechanisms where domestic ones are not able or willing to act.
- 3. Manage the complex relation between human rights, justice, and peace:** The multilateral system anchored in the UN must embrace the fact that there can be no justice without peace and no lasting peace without justice and should address the inherent and complex tensions between their respective demands.